

ESTTA Tracking number: **ESTTA340199**

Filing date: **03/31/2010**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Comedy Hall Of Fame, Inc.
Granted to Date of previous extension	03/31/2010
Address	P.O. Box 20492 St. Petersburg, FL 33742 UNITED STATES

Attorney information	Brian Gibbons 3936 S. Semoran Blvd., Suite 330 Orlando, FL 32822 UNITED STATES trademarks@briangibbons.com Phone:407-384-6156
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Applicant Information

Application No	76621097	Publication date	12/01/2009
Opposition Filing Date	03/31/2010	Opposition Period Ends	03/31/2010
Applicant	PANCER, JEFFREY 26 Rolling Drive Glen Head, NY 11545 UNITED STATES		

Goods/Services Affected by Opposition

Class 041. All goods and services in the class are opposed, namely: Television programming; live music concerts, live performances by a musical band and live, televised appearances by a professional entertainer

Grounds for Opposition

False suggestion of a connection	Trademark Act section 2(a)
Priority and likelihood of confusion	Trademark Act section 2(d)
The mark is merely descriptive	Trademark Act section 2(e)(1)
Dilution	Trademark Act section 43(c)

Mark Cited by Opposer as Basis for Opposition

U.S. Application No.	76645601	Application Date	08/15/2005
Registration Date	NONE	Foreign Priority Date	NONE

Word Mark	NATIONAL COMEDY HALL OF FAME
Design Mark	
Description of Mark	NONE
Goods/Services	Class 041. First use: First Use: 1991/07/25 First Use In Commerce: 1993/01/01 Hall of fame museum relating to the history of comedy; entertainment services, namely, television programs for presentation of awards recognizing outstanding past and present comedians

Attachments	76645601#TMSN.jpeg (1 page)(bytes) comedyhalloffame.01.pdf (6 pages)(51192 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Brian Gibbons/
Name	Brian Gibbons
Date	03/31/2010

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

COMEDY HALL OF FAME, INC.
a Florida corporation,
Opposer

v.

JEFFREY PANCER
an individual,
Applicant

In the matter of
Application Serial No. 76621097
For the mark: COMEDY HALL OF FAME

Published in the Official Gazette
On December 1, 2009

Opposition No. _____

NOTICE OF OPPOSITION

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Opposer, Comedy Hall of Fame, Inc., is a Florida corporation whose mailing address is P.O. Box 20492, St. Petersburg, FL 33742.

Applicant, Jeffrey Pancer, is an individual whose last known address was 26 Rolling Drive, Glen Head, NY 11545.

Opposer believes that it will be damaged by registration of the mark COMEDY HALL OF FAME as shown in Application Serial No. 76621097 and hereby opposes the same.

The grounds for opposition are as follows:

1. Opposer has used the mark NATIONAL COMEDY HALL OF FAME in connection with a museum relating to the history of comedy, as well as television programs for presentation of awards recognizing outstanding past and present comedians, since at least as early as 1991.
2. Opposer filed for registration of the mark NATIONAL COMEDY HALL OF FAME with the United States Patent and Trademark Office in 1991, which was granted in 1993 and assigned Registration No. 1,797,318. Subsequently, this registration was inadvertently allowed to expire in 2004.

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3. Applicant filed for registration of the mark COMEDY HALL OF FAME in November 2004, which was assigned Application Serial No. 76621097.
4. Discovering the expiration of its registration, Opposer filed a new application for registration of the NATIONAL COMEDY HALL OF FAME mark in 2005, which application has been rejected due to a likelihood of confusion with Applicant's application.
5. The examining attorney assigned to Applicant's application issued a rejection based upon a likelihood of confusion between Applicant's mark and a prior-filed application, as well as based upon the descriptiveness of Applicant's mark.
6. Following applicant's filing of a response arguing against this rejection, the examining attorney maintained the rejection on grounds of descriptiveness, but suspended the application pending resolution of the prior-filed application.
7. Due to what appears to be an inadvertent error, when the prior-filed application became abandoned and no longer served as an obstacle to registration, the examining attorney approved Applicant's application for publication, despite the prior rejection on grounds of descriptiveness.
8. The terms "Comedy" and "Hall of Fame" directly describe characteristics, functions, features, purposes, attributes and properties of the services with which Applicant's mark is or will be used.
9. Applicant's mark COMEDY HALL OF FAME is merely descriptive of the services listed in Application Serial No. 76621097, in violation of Section 2(e) of the Lanham Act.

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10. Opposer's NATIONAL COMEDY HALL OF FAME has become distinctive of and associated in the minds of the public with Opposer as a well-known provider of its services.
11. The mark proposed for registration by Applicant in Application Serial No. 76621097 is similar in appearance, connotation, sound and commercial impression to the mark used by Opposer in connection with its services described above.
12. Priority is not an issue. The date of first use for Opposer's mark long precedes the filing date of Applicant's intent-to-use application.
13. The services described in Application Serial No. 76621097 are closely related to Opposer's services described above.
14. Upon information and belief, Opposer avers that the services described in Application Serial No. 76621097 could be advertised and provided in similar channels of trade and to similar customers as Opposer's goods and services.
15. Applicant's use of the mark COMEDY HALL OF FAME in connection with the services described in Application Serial No. 76621097 interferes with Opposer's use of its NATIONAL COMEDY HALL OF FAME mark and is likely to cause the public to believe that the services of Applicant originate with Opposer, or vice versa, or that Applicant is owned or controlled by or in some manner affiliated or associated with Opposer, or vice versa, and is otherwise likely to cause confusion, cause mistake or deceive, in violation of Section 2(d) of the Lanham Act.
16. If Applicant is granted a registration based on Application Serial No. 76621097, Applicant would thereby obtain at least a prima facie exclusive right to use the

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- COMEDY HALL OF FAME mark. Any such registration would be a source of damage and injury to Opposer and its customers.
17. Moreover, any defect, inadequacy or deficiency found in Applicant's services marketed under the COMEDY HALL OF FAME mark would reflect negatively upon and seriously injure the reputation and goodwill associated with the goods and services marketed by Opposer and provided in connection with its NATIONAL COMEDY HALL OF FAME mark.
 18. Opposer's NATIONAL COMEDY HALL OF FAME mark is famous and distinctive within the meaning of the Lanham Act.
 19. Registration of Applicant's mark would lessen the capacity of Opposer's famous and distinctive NATIONAL COMEDY HALL OF FAME mark to distinguish and identify Opposer's services from those of others, thereby diluting the distinctive quality of Opposer's mark in violation of Sections 13 and 43(c) of the Lanham Act.
 20. The term "Comedy Hall of Fame" points uniquely and unmistakably to Opposer, recognized by the media and persons both within and outside of the field of comedy.
 21. Opposer is not connected in any way with the services identified by Applicant's use of the mark COMEDY HALL OF FAME.
 22. Due to the similarities in wording between Applicant's mark and that used by Opposer, members of the public have or will falsely assume a connection between Applicant and Opposer.

BRIAN R. GIBBONS

Attorney at Law

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23. Because Applicant's registration of COMEDY HALL OF FAME would falsely suggest a connection with Opposer, registration of this mark is precluded by Section 2(a) of the Lanham Act.

WHEREFORE, Opposer prays that Application Serial No. 76621097 be rejected, that no registration be issued thereon to Applicant, that registration of the mark COMEDY HALL OF FAME for the services specified therein be denied and refused, and that this opposition be sustained in favor of Opposer.

The filing fee of \$300.00 pursuant to 37 C.F.R. § 2.6(a)(17) is enclosed herewith.

Comedy Hall of Fame, Inc. has appointed Brian R. Gibbons, an attorney admitted to practice before the Supreme Court of the State of Florida, whose principal office is located at 3936 S. Semoran Blvd, Suite 330, Orlando, Florida 32822-4015, as its duly authorized agent and attorney in the matter of this cancellation, with full power of substitution and revocation, to transact all business with the Patent and Trademark Office and elsewhere in the United States courts, to sign all papers which may be hereinafter filed, and to receive all communications.

Respectfully submitted,



Brian R. Gibbons
Attorney for Opposer

03/31/2010

Date

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BRIAN R. GIBBONS

Attorney at Law

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CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing document is being deposited with the United States Postal Service as first class mail, postage prepaid, in an envelope addressed to Andrew B. Katz, Chernow Katz LLC, 721 Dresher Road, Suite 1100, Horsham, PA 19044 this 31st day of March, 2010.



Brian R. Gibbons
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Attorney for Opposer

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